UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/79/Add.84
19 November 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Iraq

1. The Committee considered the fourth periodic report of Iraq (CCPR/C/103/Add.2) at its 1626th and 1627th meetings, on 27 October 1997, and subsequently adopted 1/ the following observations:

A. Introduction

2. The Committee welcomes the State party's fourth periodic report, and notes its timely submission and the willingness of Iraq to have a continued dialogue with the Committee. The Committee regrets that while the report provided information on Iraq's legislative framework, it did not deal with the actual state of implementation of domestic laws and of the Covenant, nor with the difficulties encountered in the course of their implementation. The presence of a delegation from the capital, which answered questions asked by members of the Committee and provided clarification on the situation in Iraq, is also welcomed by the Committee.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee recognizes that eight years of war with the Islamic Republic of Iran and the conflict following Iraq's invasion of Kuwait caused the destruction of part of the country's infrastructure and considerable human suffering, and produced a very difficult economic and social situation in Iraq.

1/ At the 1640th meeting, held on 5 November 1997.

4. The Committee notes that the effect of sanctions and blockades has been to cause suffering and death in Iraq, especially to children. The Committee reminds the Government of Iraq that, whatever the difficulties, the State party remains responsible for implementing its obligations under the Covenant.

C. Positive aspects

5. The Committee welcomes the adoption of Revolutionary Command Council Decree No. 91 of 1996, which repeals the application of the death penalty and amputation in certain cases.

6. The Committee welcomes the repeal of Revolutionary Command Council Decree No. 111 of 1990, which exempted from prosecution certain "crimes of honour" involving the killing of female relatives.

D. Subjects of concern and the Committee's recommendations

7. The Committee is deeply concerned that all government power in Iraq is concentrated in the hands of an executive which is not subject to scrutiny or accountability, either politically or otherwise. It operates without any safeguards or checks and balances designed to ensure the proper protection of human rights and fundamental freedoms in accordance with the Covenant. This appears to be the most significant factor underlying many violations of Covenant rights in Iraq, both in law and in practice.

8. The Committee regrets that many of its questions relating to allegations of serious violations of rights were not answered. In particular, the Committee notes with grave concern reports from many sources concerning the high incidence of summary executions, arbitrary arrests and detention, torture and ill-treatment by members of security and military forces, disappearances of many named individuals and of thousands of people in northern Iraq and in the Southern Marshes, and forced relocations. In this respect, the Committee expresses its regret at the lack of transparency on the part of the Government in responding to these concerns. The Committee also notes the statement by the delegation that a non-governmental committee has been established to deal with disappearances, and regrets that it was not able to obtain information on its functions or on its powers to investigate cases of involuntary disappearance, to bring those found responsible to justice and to otherwise prevent and combat disappearances in Iraq. Therefore:

> The Committee recommends that all allegations mentioned above be fully, publicly and impartially investigated, that the results of such investigations be published and that the perpetrators of those acts be brought to justice. Information on the powers, functions and activities of the committee responsible for dealing with disappearances should be provided in the State party's next periodic report.

9. The Committee regrets that temporary decrees adversely affecting the implementation of certain Covenant rights have recently been enacted by the Revolutionary Command Council. In addition, the Committee expresses its concern that certain provisions of these decrees, which the State party has

sought to justify on the ground that they are provisional, are incompatible with certain non-derogable Covenant rights, such as the right to life, the prohibition of torture and the principle of non-retroactivity of criminal laws. Therefore:

> The Committee recommends that a thorough review of existing temporary laws and decrees be undertaken with a view to ensuring their compliance with the provisions of the Covenant. In this regard, the Committee stresses that Covenant rights may be derogated from only in accordance with article 4 of the Covenant.

10. The Committee also notes with great concern the increase in the categories of crimes punishable by the death penalty, pursuant to Revolutionary Command Council Decrees No. 13 of 1992, No. 9 of 1993, Nos. 86, 95, 179 and 118 of 1994, and No. 16 of 1995, and that the new categories include non-violent and economic infringements. These measures are incompatible with Iraq's obligations under the Covenant to protect the right to life. Therefore:

> The Committee recommends that Iraq abolish the death penalty for crimes which are not among the most serious crimes, in accordance with article 6, paragraph 2, of the Covenant, and that total abolition of the death penalty be considered. In this regard, the State party should give careful consideration to the observations in the Committee's General Comment No. 6 on the right to life, and in particular those concerning the restricted scope of the expression "most serious crimes".

11. The Committee expresses concern that Revolutionary Command Council Decree No. 115 of 25 August 1994 violates the provisions of article 6, paragraph 2, of the Covenant, which restricts the application of the death penalty to the "most serious crimes", by stipulating that the death penalty will be imposed on persons who have evaded military service several times, and that it contains retroactive provisions, contrary to article 15 of the Covenant. The Committee therefore recommended that:

> The application of this decree should be suspended without delay and steps should be taken to repeal it.

12. The Committee is deeply concerned that Iraq has resorted to the imposition of cruel, inhuman and degrading punishments, such as amputation and branding, which are incompatible with article 7 of the Covenant. Similarly, the Committee is deeply concerned by Revolutionary Command Council Decree No. 109 of 18 August 1994, which stipulates that any person whose hand has been amputated for a crime thus punishable by law shall be branded between the eyebrows with an "X" symbol, by the application of this decree retroactively to persons whose hands have already been amputated, and by the explanation given by the delegation that this punishment was imposed to distinguish convicted offenders from persons mutilated in the war. In this regard:

> The imposition of such punishments should cease immediately, and all laws and decrees providing for their imposition, including RCC Decree No. 109 of 1994, should be revoked without delay.

13. The Committee expresses concern about the continued operation of family and inheritance laws which are incompatible with the principle of gender equality under articles 2, paragraph 1, 3, 23 and 26 of the Covenant. Therefore:

> Steps should be taken to promote and ensure full equality between men and women in the political, economic, social and cultural life of the country, and to eliminate all forms of legal and de facto discrimination against women.

14. The Committee notes with concern reports of arbitrary restrictions imposed by the authorities on the right to freedom of movement within Iraq and freedom to leave the territory of the State party, in breach of Iraq's obligations under article 12 of the Covenant. Therefore:

> Measures should be taken to ensure that article 12 is complied with and, among other things, that administrative costs for the issue of passports be reduced.

15. The Committee further notes with concern that special courts, which may impose the death penalty, do not provide for all procedural guarantees required by article 14 of the Covenant, and in particular the right of appeal. It also notes that in addition to the list of offences which are under the jurisdiction of the special courts, the Minister of the Interior and the Office of the President of the Republic have discretionary authority to refer any other cases to these courts. In that regard:

> Courts exercising criminal jurisdiction should not be constituted other than by independent and impartial judges, in accordance with article 14, paragraph 1, of the Covenant. The jurisdiction of such courts should be strictly defined by law and all procedural safeguards protected by article 14, including the right of appeal, should be fully respected.

16. With respect to article 19 of the Covenant on the right to freedom of expression, the Committee is concerned about severe restrictions on the right to express opposition to or criticism of the Government or its policies. The Committee is also concerned that the law imposes life imprisonment for insulting the President of the Republic, and in certain cases death. It also imposes severe punishments for vaguely defined crimes which are open to wide interpretation by the authorities, such as writings detrimental to the President. Such restrictions on freedom of expression, which effectively prevent the discussion of ideas or the operation of political parties in opposition to the ruling Ba'ath party, constitute a violation of articles 6 and 19 of the Covenant and impede the implementation of articles 21 and 22 of the Covenant, which protect the rights to freedom of peaceful assembly and association. Therefore:

> Penal laws and decrees which impose restrictions on the rights to freedom of expression, peaceful assembly and association should be amended so as to comply with articles 19, 21 and 22 of the Covenant.

17. The Committee expresses concern about restrictions, prohibitions and censorship imposed on the creation and functioning of independent broadcasting media, as well as on the dissemination and broadcasting of foreign media, which are not in conformity with the requirements of article 19, paragraph 3, of the Covenant. Therefore:

> Laws and decrees dealing with the press and other media should be amended to comply with article 19, paragraph 2, of the Covenant, which protects the right to freedom of expression, including the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of (one's) choice".

18. The Committee is concerned that under article 38 (c) of the Constitution, the members of the Revolutionary Command Council are not elected by universal and equal suffrage. This is incompatible with the right of citizens to take part in the conduct of public affairs, under article 25 (a) and (b) of the Covenant. Therefore:

> The Committee recommends that steps be taken with a view to ensuring citizens the right and the opportunity to take part in the conduct of public affairs, either directly or through freely chosen representatives.

19. The Committee is also concerned that article 42 of the Constitution gives power to the Revolutionary Command Council to issue laws, decrees and decisions without being subject to independent scrutiny or review to ensure their compliance with the provisions of the Covenant. Therefore:

> Provision should be made to ensure that individuals whose rights may be violated by such laws, decrees or decisions have an effective remedy as required by article 2, paragraph 3, of the Covenant.

20. The Committee expresses concern about the situation of members of religious and ethnic minorities, as well as other groups which are the subject of discrimination in Iraq, in particular the Shi'ite people in the Southern Marshes and the Kurds. The Committee also regrets the lack of information on the situation of other minorities, such as the Turkeman, Assyrian, Chaldean and Christian minorities, and on the enjoyment of their rights under articles 26 and 27 of the Covenant. In this connection, the Committee calls attention to its General Comment No. 23 (50) on article 27 of the Covenant. Further:

> The Committee recommends that measures be taken to ensure full equality of rights for members of all religious groups as well as ethnic and linguistic minorities, and that information be provided in the State party's next periodic report on the implementation of articles 26 and 27 of the Covenant.

21. The Committee notes with concern reports concerning the difficulties faced by non-governmental organizations in regard to their establishment and functioning. Therefore:

> The Committee recommends that steps be taken without delay to facilitate the establishment and free operation of independent non-governmental organizations, with particular reference to those working in the field of human rights.

22. The Committee draws to the attention of the Government of Iraq the provisions of the guidelines regarding the form and contents of periodic reports from States parties and requests that its next periodic report, due on 4 April 2000, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Iraq.

UNITED
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CCPR

International covenant
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Distr.
GENERAL

CCPR/C/79/Add.85
19 November 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Sudan

1. The Committee considered the second periodic report of the Sudan (CCPR/C/75/Add.2) at its 1628th and 1629th meetings, on 28 October 1997, and subsequently adopted 1/ the following observations:

A. Introduction

2. The Committee welcomes the report submitted by the Government of the Sudan. It notes that the dialogue with the high-level delegation of the State party was frank, constructive and open, and it is also grateful for the further documents submitted by the Government on 3 November 1997. This permitted the Committee to have a clearer idea of the situation in the Sudan. While the second periodic report and its annexes contain substantially more information than the previous report, it is nonetheless regretted that the State party did not provide answers to all of the Committee's written list of questions, and that a number of questions asked orally also remained unanswered. The Committee acknowledges receipt of the reports by (i) the independent judicial commission which investigated events in Juba in 1992; and (ii) reports by the Advisory Council on Human Rights into allegations of slavery in southern Kordofan and of disappearances.

B. Factors and difficulties affecting the implementation of the Covenant

3. It is noted that the armed conflict originating in the southern part of the Sudan is an obstacle to the full implementation of the Covenant.

1/ At its 1642nd meeting, held on 5 November 1997.

4. The lack of reconciliation between different racial, religious, cultural and legal traditions in the north and the south of the Sudan appears to be a factor affecting the implementation of the Covenant.

C. Positive factors

5. In view of the fact that many violations of human rights have been caused in recent years in the context of the internal conflict in the Sudan, the Committee welcomes all initiatives directed towards a peaceful resolution of the conflict, including the Fourteenth Constitutional Decree which provides for measures to implement the Peace Agreement of April 1997; steps taken to give effect to this Decree; and continuing negotiations in Nairobi to resolve the conflict.

6. The Committee welcomes the progressive steps which have been taken to reduce the impact of the declared state of emergency; the existence of committees which are formulating a new Constitution; and steps which are being taken to establish a formal system of pluralistic democracy.

7. In the light of the significant displacement of persons as a result of the internal conflict, the Committee notes the efforts made to resettle such persons and to assist them to return to their places of origin.

D. Subjects of concern and the Committee's recommendations

8. The imposition in the State party of the death penalty for offences which cannot be characterized as the most serious, including apostasy, committing a third homosexual act, illicit sex, embezzlement by officials, and theft by force, is incompatible with article 6 of the Covenant. Moreover, some forms of execution fail to comply with the prohibition against cruel, inhuman or degrading treatment or punishment, especially for women, contained in article 7 of the Covenant. Therefore:

> The death penalty, if used at all, should be applicable only to the most serious crimes, in accordance with article 6, and should be repealed for all other crimes. Any imposition of the death penalty should comply with the requirements of article 7. In its next report, the State party is asked to furnish information on the number of executions which have taken place, the type of offence for which the death penalty has been imposed, and the manner in which the execution has been carried out.

9. Flogging, amputation and stoning, which are recognized as penalties for criminal offences, are not compatible with the Covenant. In that regard, the Committee notes that:

> By ratifying the Covenant, the State party has undertaken to comply with all its articles; penalties which are inconsistent with articles 7 and 10 must be abolished.

10. The Committee is concerned about the high maternal mortality rate in the Sudan, which may be the consequence of early marriage, clandestine abortions and female genital mutilation. The Committee is deeply concerned about the practice of female genital mutilation in the Sudan, particularly because it is

practised on female minors, who may suffer the consequences throughout their lives. This practice constitutes cruel, inhuman and degrading treatment and violates articles 7 and 24 of the Covenant. Therefore:

> The State party should forbid, as a matter of law, the practice of female genital mutilation, making it a discrete criminal offence. Social and educational campaigns should be pursued to eliminate the practice.

11. The Committee notes that under customary arrangements a woman's consent to marriage is mediated by a guardian, and that recourse has to be made to the courts to override any prohibition within the family on a woman's choice of a husband. Such restrictions, whether by practice or legislation, are incompatible with articles 3, 16, 23 and 26 of the Covenant. Therefore:

> The State party should repeal all legal provisions hindering women's free choice of spouse, as well as all other rules differentiating between men's and women's rights to marry and within marriage. The Committee is also concerned about the absence of a legal provision on a minimum age for marriage, and strongly recommends that such a provision be adopted forthwith.

12. The Committee is troubled by the number of reports of extrajudicial executions, torture, slavery, disappearances, abductions and other human rights violations from United Nations and NGO sources, and by the delegation's assertions that such human rights violations are relatively infrequent. In this connection, the Committee's concern extends to reports of abduction by security forces of children, particularly in the South. It welcomes the State party's declaration that it will investigate any reports of human rights abuses by police, security forces, the Popular Defence Forces or others under its responsibility. The Committee therefore recommends that:

(a) Permanent and independent mechanisms be set up to investigate alleged abuses of power by police, security forces and the Popular Defence Forces;

(b) The methodology of such investigations and their outcome should be made public;

(c) Such investigations should lead to the release of any person improperly detained, with proper compensation, and to disciplinary or criminal proceedings against those found responsible;

(d) The Government of the Sudan should continue to cooperate with United Nations bodies and non-governmental organizations on these matters;

(e) Complete information, including statistics, about such investigations and their outcome should be included in the State party's next periodic report.

13. With respect to liberty and security of the person, the Committee is particularly concerned that the vague and legally undefined concept of "national security", as applied in the Sudan, is inconsistent with the

provisions of article 9 of the Covenant and can be used as a basis for arrest and detention of persons without a more specific charge, creating an atmosphere of fear and oppression for anyone critical of the Government. Moreover, the Committee is of the view that the procedures for pre-trial detention described in paragraph 88 of the report allow the National Security Council, chaired by the President of the Republic, the power to detain persons for excessively long periods of time. Therefore:

> The Committee recommends that the concept of "national security" be clearly defined by law and that police and security officers be required to state in writing why a person has been arrested. Such information should be available to the public and should be reviewable by the courts. The provisions of the National Security Act 1994, as amended, allowing detention by the National Security Council, should be repealed.

14. The Committee is concerned that visas for foreign travel may be arbitrarily refused, in contravention of article 12 of the Covenant, that immigration officers may arbitrarily require women to show that a male relative consent's to their leaving the Sudan, and that lists of names drawn up by various executive agencies without meeting any defined legal criteria are apparently used to restrict the freedom of movement of persons, including to leave the country. Therefore:

> Any limitations on the freedom of movement must be established by law and be compatible with the provisions of the Covenant. The grounds for restricting a person's freedom of movement, including to leave the country, must comply with the Covenant and should be communicated to the individual promptly after such action is taken and should furthermore be open to prompt judicial review in all cases, including that of national security.

15. The Committee is concerned at reports of inadequate prison conditions and "ghost house" detention centres. It notes that the delegation of the State party admitted that prisons in the Sudan do not conform to international standards and that improvement is necessary. Therefore:

> The Government of the Sudan should bring all places of detention under the control of the Prison Service, take the necessary measures to bring prison conditions into line with article 10 of the Covenant and with the United Nations Standard Minimum Rules for the Treatment of Prisoners, and cooperate with the international community and NGOs in this regard as appropriate.

16. The Committee is of the view that a system of prompt trial for petty offences may be compatible with the provisions of the Covenant, but continues to be concerned at the system of trial in the Public Order Courts. Therefore:

> Training should be given to judges on appropriate penalties and on procedural safeguards which must be observed. Lashes should be excluded as a punishment, and an appellate procedure should be introduced to review convictions and sentences.

17. The Committee notes the explanation that prosecution of security personnel under the National Security Act 1994, as amended, is restricted when such persons act in the course of their duties. It is also concerned that permission must be obtained for any such prosecution. Therefore:

Members of the police and security forces should be subject to prosecution and civil suits for abuse of power without any legal restriction; the provisions of the National Security Act 1994, as amended, are inconsistent with that concept and should be repealed. Moreover, statistics on complaints filed, prosecutions, convictions and sentences of members of the police and security forces for abuse of power should be included in the next report. Statistics on the number of requests for compensation and the amount of compensation actually awarded to victims of human rights violations should also be included.

18. The Committee is concerned at the system of licensing the press and other media, and the requirement to register the names and addresses of editors, journalists and printers. The Committee questions the independence of the National Press and Publication Council. Therefore:

Current laws and decrees should be revised so as to remove all disproportionate limitations on the media, which have the effect of jeopardizing freedom of expression itself.

19. The Committee considers that unnecessary restrictions should be removed from freedom of expression and association. The right of peaceful assembly should be respected by law enforcement officers.

20. The Committee is concerned that there is no recognition in law of the right to use local languages in official communications or administrative or court proceedings, and that religious minorities can be adversely affected by a range of discretionary administrative actions which can include the destruction of schools and educational facilities under town planning regulations. Therefore:

Emphasis should be given to the need of ethnic and religious minorities, wherever they reside in the Sudan, to pursue and develop their traditions, culture and language, as required by article 27 of the Covenant.

21. The Committee is concerned that in appearance as well as in fact the judiciary is not truly independent, that many judges have not been selected primarily on the basis of their legal qualifications, that judges can be subject to pressure through a supervisory authority dominated by the Government, and that very few non-Muslims or women occupy judicial positions at all levels. Therefore:

Measures should be taken to improve the independence and technical competence of the judiciary, including the appointment of qualified judges from among women and members of minorities. Training in human rights law should be given to all judges, law enforcement officers and members of the legal profession.

22. The Committee expresses concern at official enforcement of strict dress requirements for women in public places, under the guise of public order and morality, and at inhuman punishment imposed for breaches of such requirements. Restrictions on the liberty of women under the Personal Status of Muslims Act, 1992 are matters of concern under articles 3, 9 and 12 of the Covenant. Therefore:

It is incumbent on the State party to ensure that all its laws, including those dealing with personal status, are compatible with the Covenant.

23. The Committee regrets the documented cases of official action which interferes with the rights of non-Muslim religious denominations and groups to practise their religion and to carry out peaceful educational activities. Therefore:

A mechanism should be established to protect minority religious groups from discrimination and action seeking to impede their freedom to teach and practise their religious beliefs.

24. The Committee takes note that the Government of the Sudan appears to consider that participation by citizens in the conduct of public affairs is met by a system of direct democracy. In that regard:

The Committee emphasizes that the enjoyment of the rights protected by article 25 of the Covenant requires full recognition of freedom of expression and the right to impart and receive ideas of all kinds, including those in opposition to the Government.

25. The Committee draws the attention of the Government of the Sudan to the provisions of the guidelines regarding the form and contents of periodic reports from States parties and requests that its next periodic report, due on 7 November 2001, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of the Sudan.

UNITED NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/79/Add.86
19 November 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Belarus

1. The Committee considered the fourth periodic report of Belarus (CCPR/C/84/Add.4 and Add.7) at its 1632nd and 1633rd meetings, on 30 October 1997, and subsequently adopted 1/ the following comments:

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Belarus, although it notes that the report did not comply with its guidelines concerning the form and content of periodic reports. While regretting that the report lacks sufficient information on the enjoyment of human rights by the people and the implementation of the provisions of the Covenant in law and in practice, the Committee expresses its appreciation to the delegation for the answers it provided to its questions, which to some extent enabled it to obtain a clearer picture of the human rights situation in the country, as well as for the additional written information submitted by the State party.

3. The information submitted by a number of local non-governmental organizations assisted the Committee in its understanding of the human rights situation in the State party.

1/ At the 1643rd meeting, held on 6 November 1997.

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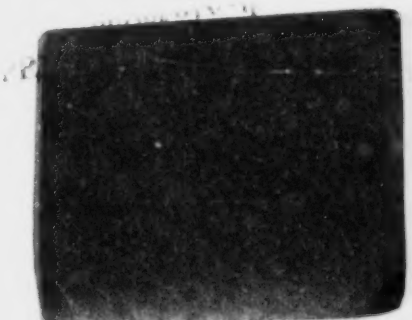

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee notes that 20 per cent of the national budget has to be devoted to alleviating the consequences of the Chernobyl disaster, and its particularly harsh effects on children.

C. Positive aspects

5. The Committee notes the various steps taken to improve the situation of women in Belarus, particularly in the labour market, and it welcomes the creation of a Women's Crisis Centre to shelter women victims of rape or domestic violence. The Committee also welcomes the statistics provided by the delegation on the participation of women in the labour force in the private and public sectors, although it regrets that they were not disaggregated so as to reveal the number of women occupying senior posts.

6. The Committee welcomes the decision of the constitutional Court, recognizing the supremacy of the Covenant over domestic law by declaring the retroactive application of a criminal law invalid, in accordance with article 15 of the Covenant.

D. Subjects of concern and the Committee's recommendations

7. The Committee notes with concern that remnants of the former totalitarian rule persist and that the human rights situation in Belarus has deteriorated significantly since the Committee's consideration of the State party's third periodic report in 1992. The Committee notes in particular the persistence of political attitudes that are intolerant of dissent or criticism and adverse to the promotion and full protection of human rights, the lack of legislative limits on the powers of the executive, and the growing concentration of powers, including legislative powers, in the hands of the executive, without judicial control.

8. The Committee notes with concern that the number of crimes for which the death penalty is applicable under the Criminal Code is still very high, and that decrees defining new crimes punishable by death, such as Presidential Decree No. 21 of 21 October 1997, have recently been enacted. The Committee expresses its serious concern at the very high number of death sentences actually carried out. Furthermore, the Committee is also concerned at the secrecy surrounding the procedures relating to the death penalty at all stages. Therefore:

> The Committee recommends that the application of the death penalty be restricted to the most serious crimes, as provided for in article 6, paragraph 2, of the Covenant, and that its abolition be considered by the State party at an early date. To that end the Committee recommends that a thorough review of relevant legislation and decrees be undertaken to ensure their compliance with the Covenant and, in doing so, due account be taken of the Committee's General Comment No. 6 (16) and of the Committee's jurisprudence establishing that the imposition of the death penalty following a trial which does not comply with the requirements of article 14 of the Covenant violates article 6.

9. The Committee expresses its concern about numerous allegations of ill-treatment of persons by police and other law enforcement officials during peaceful demonstrations and on arrest and detention, and about the high number of cases in which police and other security officials resort to the use of weapons. Noting that investigations of such abuses are not conducted by an independent mechanism and that the number of prosecutions and convictions in these cases is very low, the Committee expresses concern that these phenomena may lead to impunity for members of the police and other security officials. Therefore:

> The Committee recommends that, in order to combat impunity, steps be taken to ensure that all allegations of ill-treatment and unlawful use of weapons by security and police officials be promptly and impartially investigated by an independent body, that the perpetrators be prosecuted and punished, and that the victims be compensated. Moreover, in accordance with paragraph 10 of the Committee's General Comment No. 20 (44) on article 7 of the Covenant, "enforcement personnel, (...) police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training" concerning the ban on torture and other cruel, inhuman or degrading treatment prohibited by article 7 and the observance of other human rights norms.

10. The Committee notes with concern that pre-trial detention may last up to 18 months, and that the competence to decide upon the continuance of pre-trial detention lies with the Procurator and not with a judge, which is incompatible with article 9, paragraph 3, of the Covenant. The Committee also notes with regret that it has not been clarified in the report or in the course of the discussion whether proceedings before a court challenging the lawfulness of the detention, in accordance with article 9, paragraph 4, of the Covenant, are available to persons thus detained. In this regard:

> The Committee recommends that the laws and regulations relating to pre-trial detention be reviewed as a matter of priority so as to comply with the requirements of article 9 of the Covenant.

11. The Committee further notes with concern that the supervision of places of detention, by virtue of the Law of the Procurator's Office, is under the competence of the Procurator's Office, and that there exists no independent mechanism competent to receive and investigate complaints by detainees. Moreover, the Committee expresses its concern at the overall conditions of detention in prisons, in particular with respect to overcrowding, and wishes to emphasize that the existence of "punishment cells" and the fact that food rations are reduced for detainees placed in such cells, the pressovchiki in prison cells, and the conditions of detention of prisoners sentenced to death, are matters of particular concern. Therefore:

> The Committee recommends that steps be taken to improve prison conditions, including conditions for prisoners on death row, and that in so doing account be taken of the Committee's General Comment No. 21 (44) on article 10 of the Covenant and the United Nations Minimum Standard Rules for the Treatment of Prisoners. The Committee recommends in

particular that the practice of "punishment cells", in which particularly harsh conditions are imposed on prisoners, and the use of pressovchiki, are contrary to the Covenant, and recommends that their use be abolished.

12. With respect to the freedom of movement and the right to choose one's residence, the Committee reiterates the concerns it expressed during the consideration of the State party's third periodic report in regard to the retention of the Propiska (residents' permit) system used under the previous regime. The Committee also expresses its concern about the number of unreasonable restrictions imposed by article 5 of the Procedure for Entry to and Exit from the Republic of Belarus by Citizens of the Republic of Belarus Act on the freedom of citizens to leave the country, some of them being vaguely defined and open to wide interpretation by the authorities and therefore susceptible of abuse, such as possession of State secrets, refusal to discharge obligations, or ongoing proceedings in case of a civil suit. Therefore:

The Committee recommends that measures be taken to ensure that article 12 of the Covenant is fully complied with, and it urges the State party to repeal the Propiska system.

13. The Committee notes with concern that the procedures relating to tenure, disciplining and dismissal of judges at all levels do not comply with the principle of independence and impartiality of the judiciary. The Committee is particularly concerned that the judges of the Constitutional Court and Supreme Court can be dismissed by the President of the Republic without any safeguards. The Committee also notes with concern the allegation that two judges were dismissed by the President of the Republic on the ground that in the discharge of their judicial functions they failed to impose and collect a fine imposed by the executive. Furthermore, the Committee is concerned at the failure of the President of the Republic to respect the decisions of the Constitutional Court and to observe the rule of law.

14. The Committee also notes with concern the adoption of the Presidential Decree on the Activities of Lawyers and Notaries of 3 May 1997, which gives competence to the Ministry of Justice for licensing lawyers and obliges them, in order to be able to practise, to be members of a centralized Collegium controlled by the Ministry, thus undermining the independence of lawyers. In this regard:

The Committee stresses that the independence of the judiciary and the legal profession is essential for a sound administration of justice and for the maintenance of democracy and the rule of law. The Committee urges the State party to take all appropriate measures, including review of the Constitution and the laws, in order to ensure that judges and lawyers are independent of any political or other external pressure. The attention of the State party is drawn in this connection to the 1985 Basic Principles on the Independence of the Judiciary and the 1990 Basic Principles on the Role of Lawyers, adopted by the United Nations General Assembly.

15. The Committee expresses concern about reports of arbitrary infringements of the right to privacy, in particular of abuses by the authorities in regard to wire-tapping and house searches. Moreover, the Committee notes with concern that, under article 20 of the Law on Investigative Activities, decisions on the legality of such activities are in the competence of the General Procurator, without a court review. Therefore:

> The Committee recommends that investigative activities affecting the right to privacy be conducted in accordance with article 17 of the Covenant, and that the competence to decide upon requests for and the legality of such activities be transferred to the courts.

16. The Committee notes the statement of the delegation of Belarus that legislation on conscientious objection to military service is envisaged. In this regard:

> The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be passed at an early date in compliance with article 18 of the Covenant and the Committee's General Comment No. 22 (48).

17. The Committee expresses its deep concern about the numerous and serious infringements of the right to freedom of expression. In particular, the fact that most publishing, distribution and broadcasting facilities are State owned, and that editors-in-chief of State-supported newspapers are State employees, effectively exposes the media to strong political pressure and undermines its independence. The many restrictions imposed on the media, in particular the vaguely defined offences, are incompatible with article 19, paragraph 3, of the Covenant. The Committee also notes that as a result of the provisions of Presidential Decree No. 218 of 18 March 1997, the freedom to import and export information, either through the print or audio-visual media, is severely restricted. Furthermore, the Committee expresses concern about reports of harassment and intimidation of local and foreign journalists by the authorities and the denial of access to public broadcasting facilities by political opponents to the Government. Therefore:

> The Committee urges the State party to take all necessary measures, legislative as well as administrative, in order to remove these restrictions on freedom of expression, which are incompatible with its obligations under article 19 of the Covenant, as a matter of priority.

18. The Committee also expresses its concern about severe restrictions imposed on the right to freedom of assembly which are not in compliance with the Covenant. The Committee notes in particular that applications for permits to hold demonstrations are required to be submitted 15 days prior to the demonstration and are often denied by the authorities, and that Decree No. 5 of 5 March 1997 imposes strict limits on the organization and preparation of demonstrations, lays down rules to be observed by demonstrators, and bans the use of posters, banners or flags that "insult the honour and dignity of officials of State organs" or which "are aimed at damaging the State and public order and the rights and legal interests of citizens". These restrictions cannot be regarded as necessary in a democratic society to protect the values mentioned in article 21 of the Covenant. Therefore:

The Committee recommends that the right of peaceful assembly be fully protected and guaranteed in Belarus in law and in practice and that limitations thereon be strictly in compliance with article 21 of the Covenant, and that Decree No. 5 of 5 March 1997 be repealed or modified so as to be in compliance with that article.

19. With respect to article 22 of the Covenant, the Committee is also concerned about the difficulties arising from the registration procedures to which non-governmental organizations and trade unions are subjected. The Committee also expresses concern about reports of cases of intimidation and harassment of human rights activists by the authorities, including their arrest and the closure of the offices of certain non-governmental organizations. In this regard:

The Committee, reiterating that the free functioning of non-governmental organizations is essential for protection of human rights and dissemination of information in regard to human rights among the people, recommends that laws, regulations and administrative practices relating to their registration and activities be reviewed without delay in order that their establishment and free operation may be facilitated in accordance with article 22 of the Covenant.

20. The Committee, while noting that under the Citizens' Communications Act of 6 June 1996 communications may be addressed to State organs, expresses concern that there is no independent mechanism competent to investigate and monitor allegations of human rights violations in Belarus. It also expresses concern at the lack of publicity in regard to the availability of the procedure under the Optional Protocol to the Covenant to victims of violations of their rights under the Covenant, though the right to have recourse to international complaints procedures has been given constitutional protection in Belarus. Therefore:

The Committee recommends that steps be taken to expedite the planned establishment of an Ombudsman's Office and to ensure that he/she has effective powers to investigate complaints of violations of human rights. Information on the individual communications procedure under the Optional Protocol should be disseminated among the public at large, and in particular among prisoners (including prisoners on death row) and other detainees and members of the legal profession, and education on the full extent of their human rights should be made available to the population at large. A mechanism should be established to ensure the implementation of the Views expressed by the Committee under the Optional Protocol to the Covenant.

21. The Committee draws the attention of the Government of Belarus to the provisions of the guidelines regarding the form and contents of periodic reports from States parties, and requests that its next periodic report, due on 7 November 2001, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Belarus.

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